

Serial No. 09/669,363
Applicant: Pennington
Group Art Unit: 3763

Patent
20450-64

REMARKS

Claims 1-37 of the present application are currently pending. In the Office Action dated December 4, 2002, claims 1-4, 9-11, 14, and 16-37 have been rejected, and claims 5-8, 12, 13, and 15 have been objected to.

In response, the cited references have been reviewed and the rejections and objections made to the claims by the Examiner have been considered. Claims 5-8, 12, 13, and 15 have been amended. For the reason set forth below, it is submitted that all claims are in condition for allowance and allowance of the application is respectfully requested.

Claim Objections

In the Office Action, the Examiner objected to claims 5-8, 12, 13, and 15 as being dependent on a rejected base claim, but would be allowable if rewritten in independent form to include all the limitation of the base claim and any intervening claims.

In response, the Applicants have amended claims 5-8, 12, 13, and 15 to include all the limitations of the base claim and any intervening claims. As a result, the Applicants respectfully submit that claims 5-8, 12, 13, and 15 are in condition for allowance and allowance of the claims is respectfully requested. The Applicants note that such amendments are being made solely in response to the Examiner's objections.

Rejections under 35 USC §103

In the Office Action dated December 4, 2002, claims 1-4, 9-11, 14, 16, and 18-37 were rejected under 35 USC §103 as being unpatentable over United States Pat. No. 6,328,229, issued to Duronio et al. (hereinafter *Duronio*). In addition, claim 17 was rejected under 35 USC §103 as being unpatentable over the *Duronio* reference in view of United States Pat. No. 6,121,341, issued to Sawhney et al. (hereinafter *Sawhney*).

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For the reasons set forth below, the Applicants respectfully traverse the rejections to the pending claims and respectfully submit that the pending claims define patentable subject matter over the cited prior art.

To establish a *prima facie* case of obviousness, the Examiner must meet three basic criteria. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. (see MPEP §2143.03).

Claim 1 is directed to a fluid delivery device for minimally invasive surgical procedures and includes a tubular component having a distal end for insertion into a body cavity, and a spray tip assembly attached to the distal end for discharging fluid into the body cavity. The spray tip assembly includes a first mechanical breakup unit having at least one feed port configured to direct a fluid into a first spin chamber and issue into a first exit port, and a second mechanical breakup unit positioned alongside the first mechanical breakup unit and having at least one feed port configured to direct a fluid into a second spin chamber and issue into a second exit port. The first and second exit ports extend through the external surface of the spray tip. Claim 17, which is indirectly dependent on claim 1, includes an optical fiber positioned through the spray assembly.

The *Duronio* reference is direct to a low volume mixed spray head for mixing and dispensing of two reactive fluid components and includes a body portion having a mixing space formed therein, an exit orifice formed in the body portion, and at least two entry ports in communication with at least two source separate fluid component sources and the mixing space. The mixing space of the *Duronio* device receives the individual fluid components from the separate component sources, mixes the components, and dispenses a mixture thereof through exit orifice. Unlike claim 1 of the present application, the Duronio device fails to teach or suggest first and second exit ports extending through the external surface of the spray tip, enabling the materials

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dispensed from the fluid delivery device to be mixed external of the device. Rather, the Duronio device mixes a multiple component material within the applicator prior to dispensing the material from the spray tip. Therefore, the Duronio reference fails to teach or suggest all the claim limitations of claim 1. (see MPEP §2143.03).

The Sawhney reference is directed to redox and photoinitiator systems for priming and improved adherence of gels to substrates and includes a proximal portion operable by a user having an applicator outlet for addressing the tissue surface, at least two chambers for receiving fluids to be dispensed, and conduits connecting each chamber to the applicator outlet at the distal portion of the device. Further, the device includes an optical emitter at the distal portion of the device. Unlike claim 1 of the present application, the Sawhney device fails to teach or suggest first and second exit ports extend through the external surface of the spray tip, enabling the materials dispensed from the fluid delivery device to be mixed external of the device. Therefore, the Sawhney reference fails to teach or suggest all the claim limitations of claim 1. (see MPEP §2143.03).

The Duronio and Sawhney references in combination neither teach nor suggest individual exit ports for the separate components of a multiple component material and, as such, may only dispense mixed material. As such, the Duronio and Sawhney references fail to teach or suggest all the claim limitations. (see MPEP §2143.03).

For at least the reasons stated above, it is submitted that independent claim 1 is not anticipated by the Duronio and Sawhney references. Moreover, for at least the same reasons, the Applicants respectfully submit that dependent claims 2-4, 9-11, 14, 16, and 18-37 are also patentable.

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CONCLUSION

For the foregoing reasons, all claims presently on file in the subject application are in condition for immediate allowance, and such action is respectfully requested.

If it is felt for any reason that direct communication with applicants' attorney would serve to advance prosecution of this case to finality, the Examiner is invited to call the undersigned attorney at the below listed telephone number.

The Commissioner is authorized to charge any fee which may be required in connection with this Amendment to deposit account No. 50-1901.

Respectfully submitted,

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